

VCNCL, LLC.  
  
Employer  
  
and  
  
RETAIL WHOLESALE AND DEPARTMENT  
STORE UNION  
AFL-CIO  
  
Petitioner

NOW COMES EMPLOYER, VCNCL, L.L.C., through undersigned counsel and respectfully responds to the Notice to Show Cause in the Referenced Matter. Employer has refused to bargain with the certified union in the captioned matter. Counsel for General Counsel, by motion. has placed this matter before the Board for Summary Judgment. For the reasons set forth in Employer's Objections to the conduct of the election, Employer contests the Certification of Bargaining Representative. There is no fact dispute concerning the Employer's refusal to bargain. The Employer's conduct is predicated on its belief the Board erred in Certifying the Union as the exclusive representative of the bargaining unit as defined herein.

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the Employer's objections and order a hearing on the radically unusual composition of the bargaining unit, the last minute change in the composition of the unit, the timing of the communication of the change to the voters in the unit, and the timing of the announcement of the denial of Employer's request for review (between the two split voting periods). These actions prevented the employees from knowing, considering and making an informed choice in the representation election. Compounding this failure is the chilling effect upon Employer imposed by the Region's issuing complaint in 15 CA 116079, immediately prior to the election.

The employees were denied the opportunity for full and frank discussion about the composition of the bargaining unit or the issuance of the Complaint prior to voting on the matter. The Employer's ability to discuss these important issues was adversely affected by the intimidating effect of the issuance of a meritless unfair labor practice Complaint and the restrictions imposed upon its communications by the Region's overly broad application of *Peerless Plywood Co.* 107 NLRB 427, 33 LRRM 1151 (1953)]. These circumstances destroyed the laboratory conditions necessary to justify imposing collective bargaining upon all of the individuals within the Board defined unit for collective bargaining. The Board previously erred by not conducting a hearing on the Employer's objections relating to these issues and setting the election aside. The Board should revisit its decisions.

For these reasons we respectfully urge the Board to reconsider its prior decisions, but understand and believe that course is unprecedented, and an unlikely result. Therefore, Employer has refused to bargain to obtain the opportunity for judicial review.

Respectfully submitted this 3rd day of June 2015.

/s/ Norman A. Mott, III

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**AFFIDAVIT OF SERVICE**

I the undersigned representative of Employer, after being duly sworn certify that a copy of the above and foregoing has been served upon the RWDSU and its counsel by facsimile transmission, and e-mail this 3rd day of June 2015, and upon General Counsel and Region 15 by facsimile transmission.

/s/ Norman A. Mott, III

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